

BEFORE THE  
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Main Street McMinnville Inc. )	
	District 1, Map 68E, Group H, Control Map 68E, )	
	Parcel 8, Special Interest 000 )	
	<i>Claim of Exemption</i> )	Warren County

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal pursuant to Tenn. Code Ann. section 67-5-212(b)(2) from the partial denial of an application for exemption of the subject property from ad valorem taxation. The application was filed with the State Board of Equalization ("State Board") on January 10, 2006. By letter dated January 5, 2007 (copy attached), State Board staff attorney Mark Aaron notified the applicant that:

70% of the improvements and land are approved for exemption, effective 4/13/2006. The remaining 30% of the improvements and land are denied exemption and shall remain taxable.

Main Street McMinnville, Inc. ("MSM"), the applicant and owner of the property in question, appealed this initial determination to the State Board on April 4, 2007. The undersigned administrative judge conducted a hearing of this matter on November 13, 2007 in McMinnville. MSM was represented by Susan N. Marttala, Esq., of Galligan & Newman (McMinnville). The Warren County Assessor of Property did not attend or participate in the hearing.

Findings of Fact and Conclusions of Law

MSM, a nonprofit corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, was incorporated in this state on December 16, 1999. As recited in Section 2 of its Bylaws, "[t]he mission of Main Street McMinnville is to establish a partnership between the public and private sectors dedicated to revitalizing Downtown McMinnville, with emphasis on community livability, economic restructuring and historic preservation."

MCM's office is currently located in the local chamber of commerce building. The property in question – a century-old, two-story structure at 113 East Main Street in McMinnville – was formerly owned by Union Planters Bank, N.A. ("Union Planters"). In 2001, Union Planters and a "501(c)(3)" historical society known as Heritage Alliance, Inc. ("HA") entered into a verbal agreement whereby the all-volunteer organization would restore the then-uninhabitable building for the purpose of accommodating a museum of Warren County history and photography. HA substantially completed the restoration of the ground floor of the subject building in December, 2005; and the contemplated "Heritage Alliance Museum," which occupies that entire floor, opened to the public on April 13, 2006. Admission to this museum is free.



Meanwhile, on May 29, 2003, Union Planters donated the subject property to MSM with the understanding that it would eventually house the museum and also serve as suitable office space for MSM. Alas, the second floor of the building has yet to be renovated and remains in poor condition – without an HVAC system.

MSM and HA executed a formal Lease Agreement on June 1, 2006, effective from then until the latter ceases to operate the museum on the subject property. Section I of this agreement precisely demarcates the “leased premises” as follows:

...2,540.8 square feet (2,084 square feet of showroom space and 456.4 square feet of storage space) and 492 square feet on the second floor (three offices on the East Side beginning at the back and coming forward...The stairway leading upstairs and halls will be a common area (353.3 square feet) shared between the Landlord and Tenant (stairwell 124.2 square feet, front hall 80.9 square feet, rear hall 148.4 square feet).

In consideration of HA’s improvements to the subject property and management of the museum, MSM charges no rent. However, MSM expressly reserves the right to remodel for its own future use as office space 1,088.2 (approximately 57%) of the total area on the second floor of the subject building. In this regard, Section II of the Lease Agreement provides that:

If landlord chooses to occupy and maintain office space on the second floor of the building, Tenant agrees to vacate such space on the second floor of the building as may be required by the Landlord within sixty days (60). **The Tenant, at the time of this Lease, utilizes the second floor as storage space of exhibit materials and storage space for the museum and intends to continue to occupy this space for storage until the Landlord requests that the tenant remove items owned by the Tenant.** [Emphasis added.]

At the hearing, MSM executive director Chris M.T. Wilson and HA past president Joan Lunsford confirmed that the whole second floor of the 113 East Main Street building has been solely and continuously occupied and used by HA for the storage of objects related to its museum. MSM claims a 100% exemption of the subject property on this basis.

Tenn. Code Ann. section 67-5-212(a)(1)(A) states (in relevant part) that:

There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious, charitable, scientific or nonprofit educational institution that is occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists, **or that is occupied and used by another exempt institution purely and exclusively for one (1) or more of the purposes for which it was created or exists under an arrangement whereunder the owning institution receives no more rent than one dollar (\$1.00) per year...**[Emphasis added.]

In this state, contrary to the law in most other jurisdictions, property tax exemptions are liberally construed in favor of religious, charitable, scientific, and educational institutions. See, e.g., George Peabody College for Teachers v. State Board of Equalization, 407 S.W.2d 443 (Tenn. 1966). Nevertheless, as the party seeking to change the initial determination on its



application for exemption, MSM has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

The pro rata exemption approved by the State Board designee was predicated only on the lessee's (HA's) usage of the subject property.<sup>1</sup> Arguably, as Mr. Aaron determined, MSM would not be entitled to exemption of the building area which was omitted from the specific description of the "Leased Premises" in the Lease Agreement.<sup>2</sup> After all, the State Board could not appropriately consider an *impermissible* or *unauthorized* use of property to be exemptible. But in the opinion of the administrative judge, Section II of the Lease Agreement may fairly be construed as granting HA the right to occupy and use the entire second floor of the building until such time as MSM requests the tenant to "vacate" some or all of the designated "reserved" area.<sup>3</sup> The evidence of record certainly indicates that the parties have adopted this interpretation.

There is no doubt that storage of historical artifacts and exhibit materials is reasonably necessary for the accomplishment of HA's exempt purposes. Hence the administrative judge respectfully recommends exemption of the subject property in its entirety.<sup>4</sup>

#### Order

It is, therefore, ORDERED that the subject property shall be totally exempt from taxation, effective April 13, 2006.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal "**must be filed within thirty (30) days from the date the initial decision is sent.**" Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the

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<sup>1</sup>In his initial determination letter, Mr. Aaron concluded that MSM's "principal activities" were "predominantly commercial in nature." Nevertheless, he deemed MSM to be a qualifying institution within the meaning of Tenn. Code Ann. section 67-5-212 insofar as the property in question was actually devoted to the "charitable and/or educational purposes" of a museum.

<sup>2</sup>In no event would privately-owned property that is merely held for future use be eligible for tax-exempt status. See, e.g., Oak Ridge Hospital of Methodist Church v. City of Oak Ridge, 420 S.W.2d 583 (Tenn. Ct. App. 1967).

<sup>3</sup>At the appellant's request, the administrative judge held the record in this proceeding open for a period of 15 days after the date of hearing for the possible submission of an amended Lease Agreement. No such document was filed within the allotted time.

<sup>4</sup>Tenn. Code Ann. section 67-5-212(b)(2) requires a successful applicant for property tax exemption to "promptly report to the assessor any change in the use or ownership of the property that might affect its exempt status."



appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 10<sup>th</sup> day of December, 2007.



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PETE LOESCH  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

cc: Susan N. Marttala, Attorney, Galligan & Newman  
Carolyn Miller, Warren County Assessor of Property

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**STATE OF TENNESSEE  
STATE BOARD OF EQUALIZATION**

SUITE 1700  
JAMES K. POLK OFFICE BUILDING  
505 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-0280  
PHONE (615) 401-7883

JANUARY 05, 2007

MR. CHRIS WILSON  
MAIN STREET MCMINNVILLE, INC.  
P.O. BOX 373  
MCMINNVILLE, TN 37111

Re: Initial Determination - Exemption Application – Property identified as 01 068E H 068E 00800  
000 owned by MAIN STREET MCMINNVILLE, INC. in WARREN County

Dear MR. WILSON:

Based upon all of the information submitted on behalf of the organization you represent, it is the determination of this office that your application for property tax exemption be partially approved and partially denied.

70% of the improvements and land are approved for exemption, effective 4/13/2006. The remaining 30% of the improvements and land are denied exemption and shall remain taxable.

The effective date is 4/13/2006. Tennessee Code Annotated § 67-5-212(b)(3)(A). A detailed legal analysis follows.

Under Tennessee Code Annotated § 67-5-212(a)(1)(A), property may be eligible for exemption where it is owned by one qualifying institution but actually occupied and used by another qualifying institution for religious, charitable, scientific, or nonprofit educational purposes under an arrangement where no more than \$1 per year rent plus a reasonable service and maintenance fee is received by the owning institution. It appears that, pursuant to the lease arrangement, all of the first floor and a portion of the second floor (approximately 70% of the building) are occupied and used by the Heritage Alliance, Inc., as a museum or for purposes directly supporting museum use, and that no rent is charged. Lease Agreement Sections I and II. This area, with the exception of the gift shop, is approved for exemption. Outside of the context of a nonprofit hospital, a gift shop area does not qualify for exemption, Lane Motor Museum (Davidson County, Initial Decision & Order, 4/30/2004), but the amounts of space (approximately 10 square feet) and revenue involved do not appear to be great enough to effect the pro rata calculation.

Organizations similar to the owner have in the past been denied exemption altogether because they were found to be non-qualifying institutions. However, Main Street McMinnville, Inc., has here been deemed



to be a qualifying institution in the context of Tennessee Code Annotated § 67-5-212(c) and court cases such as Memphis Development Foundation, 653 S.W.2d 266 (Tenn. Ct. App. 1983) (granting partial exemption to organization with charter purposes very similar to the applicant's). This enables exemption of the museum portion of the property that appears to be occupied and used exclusively for charitable and/or educational purposes.

A portion of the second floor (approximately 30% of the building), while it may have undergone some interim storage use by Heritage Alliance, Inc., is reserved for renovation and use by the owning organization, Main Street McMinnville, Inc. Lease Agreement Sections I, II, and IV. Exempt occupancy and use of property must also be established in order for the non-museum portion of the building and its share of land to qualify. In Memphis Development Foundation, an organization with charter purposes similar to those of the applicant was granted only a partial exemption on a theatre property that it had renovated in a blighted urban area. The court allowed partial exemption of the property based on actual nonprofit performance use (e.g., plays and similar productions by qualifying institutions). However, the court denied exemption to the property while it was being renovated and to the extent it was used for commercial activity and/or by non-qualifying organizations.

While Main Street McMinnville, Inc., certainly appears to have many commendable purposes, its principal activities (e.g., technical assistance to merchants, development and implementation of a master plan for a downtown capital improvement project, and market analysis) are predominantly commercial in nature. The public education activities of Main Street McMinnville, Inc., associated with the master plan for the downtown capital improvement project appear to be tenuous and incidental to the commercial purposes of the organization. In any case, this activity does not appear to meet the requirements for property tax exemption in Tennessee. See State v. Rowan, 106 S.W.2d 861, 864 (Tenn. 1937) (denying exemption based on grounds that educational exemption "has not been extended to any institutions save schools or institutions where actual instruction was given as from teacher to pupil."); Memphis v. Alpha Beta Welfare Ass'n, 126 S.W.2d 323 (Tenn. 1939) (granting exemption to medically-oriented fraternity with a demonstrated "system of instruction approximating that of teacher to pupil"); Lamanna v. Electrical Worker Local Union No. 474, 518 S.W.2d 348 (Tenn. 1974) (granting exemption based on educational use of property only for portion of property exclusively used for actual apprentice and journeyman electrician training courses).

The denial of the owner's portion of the building reflects a long line of legal precedent, including the Memphis Development Foundation case discussed above and Memphis Chamber of Commerce, 232 S.W. 73 (Tenn. 1921) (holding a chamber of commerce was not an entity eligible for exemption because its primary purpose was to serve business and commercial interests with only incidental educational purposes), in addition to administrative judge opinions such as Southeast Local Development Corporation (Hamilton County, Initial Decision & Order, 8/6/2004) (denying exemption to organization focused on offering source of capital for growth and expansion of businesses) and, most recently, Knoxville Tourism & Sports Corporation (Knox County, Initial Decision & Order, 10/26/2006) (likening organization to "an industrial development corporation insofar as its overriding objectives are to stimulate business activity..." and denying exemption).

**Unless there is a change in the ownership, use, name or organizational structure, no further action will be required on the part of the organization.** If such a change should occur, a new application may be necessary and you should contact this office or the assessor of property.



The applicant or the county assessor may appeal this determination by filing an appeal form with the appropriate fee *within 90 days from the date of this letter*, using a form and fee schedule we will provide you upon request.

Sincerely,

*Mark Aaron*

Mark Aaron  
Staff Attorney

cc: Carolyn Miller, Warren County Assessor of Property  
Joy Slatton, Warren County Trustee

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